The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PAE GmbH Planning and Construction

File: B-233823

Date: March 31, 1989

DIGEST

Where a mistake in an offer other than the awardee's offer is first alleged after award, the unsuccessful offeror must bear the consequences of its mistake where the contracting officer had neither actual nor constructive notice of an error before award to another offeror.

DECISION

PAE GmbH Planning and Construction protests the award of a contract to ITS International Services Co. under request for proposals (RFP) No. DAJA37-88-R-0263, issued by the Department of the Army for base maintenance services for Lindsey Air Station and Schierstein Compound in Wiesbaden, West Germany. PAE argues that contracting officials should have discovered a mistake in the firm's cost proposal, called it to PAE's attention, and resolved the error. PAE contends that if its proposal had been corrected for the obvious error, it would have been the low cost offeror and should have been awarded the contract.

We deny the protest.

The RFP contemplated the award of a cost-plus-award-fee contract for a base year period and 2 option years. Offerors were required to submit separate technical/management and cost proposals, and to submit offers in Deutsche Marks (DM). The RFP indicated that award would be made to the offeror whose proposal offered the best value to the government, with appropriate consideration given to the following evaluation areas listed in descending order of

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importance: (1) Technical, (2) Management and (3) Cost. The RFP further provided that, while cost was the least important evaluation area and would not be point-scored, it might become the determinative factor in the final source selection decision if proposals were judged to be substantially equivalent in the Technical and Management areas. Costs were to be evaluated on the basis of cost realism.

Four proposals were submitted by the October 10, 1988, closing date. Three, including those of PAE and ITS, were found substantially equal in technical merit and included in the competitive range. The Army conducted a cost realism analysis, determined that the three offerors' cost proposals were realistic, and awarded a contract on December 1, 1988, to the low offeror, ITS, without discussions. The Army notified PAE of the award by letter dated December 2, and PAE protested the award to our Office on December 9.

PAE maintains that there was a mistake in its cost proposal under the cost element entitled "Employee Liability Insurance." The rate used to determine the amount of this cost element, PAE argues, was cited in the "cost rationale" portion of its proposal as a rate1/ per $100 of compensation. However, the amount of insurance in the six line items of its cost proposal dealing with employee liability insurance reflects a rate per $1. PAE argues that if its mistake had been corrected, it would have been the low offeror and would have received the award. PAE further contends that the mistake was so obvious contracting officials should have noticed it and pointed it out so the firm could correct the mistake.

The Army responds that the protester did not notify the contracting officer of the insurance cost miscalculation prior to award, and the mistake was not so obvious that the contracting officer should have discovered it during an examination of the proposal. The Army notes that the protester's total proposed costs were in line with the amounts offered by others within the competitive range. According to the Army, the contracting officer did not consider verifying PAE's calculation of insurance costs

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1/ PAE requested that proprietary information in its proposal and protest not be disclosed outside the government. In order to comply with this request, we have reviewed PAE's proprietary cost information in camera and we will discuss PAE's costs only to the extent necessary to address the protest.

because: (1) the insurance rate was not included on the individual worksheets attached to the cost proposal; (2) the protester consistently miscalculated the insurance costs so there was no internal discrepancy in the insurance amounts which would have alerted the contracting officer during her review; and (3) beyond the RFP provision requiring offerors to comply with local law pertaining to liability insurance, the amount of insurance was within each offeror's discretion. The Army notes that the amount of employee liability insurance proposed by the protester was comparable to that proposed by an offeror outside the competitive range.

Where, as in the instant case, a mistake in an offer other than the awardee's offer is first alleged after award, the general rule is that the unsuccessful offeror must bear the consequences of its mistake unless the contracting officer was on actual or constructive notice of an error before award. See Autoclave Engineers, Inc., B-182895, May 29, 1975, 75-1 CPD ¶ 325; BECO Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601.

The record here does not show that the contracting officer had reason to suspect a mistake in PAE's offer. As noted by the Army, there was no internal discrepancy in insurance amounts proposed by PAE in the six lines of its cost proposal dealing with employee liability insurance. Nor did the Army's cost realism analysis reveal a substantial disparity between PAE's total proposed costs and those proposed by other offerors.

In conducting a cost realism analysis of competing proposals, an agency is not necessarily required to conduct an in-depth analysis or to verify each item, but rather to exercise informed judgments as to whether cost proposals are realistic in light of the contract requirements and proposed technical approaches. See Ferguson-Williams, Inc., et al., B-232334 et al., Dec. 28, 1988, 88-2 CPD ¶ 630. The record shows that proposed rates for liability insurance varied considerably among the proposals, depending upon the amount of insurance selected, which the contracting officer felt reflected the business judgment of the offerors. While PAE comments that its proposed insurance costs were approximately 100 times those proposed by other offerors in the competitive range, the record shows the disparity was considerably less. Moreover, if PAE's insurance costs were corrected to the amounts PAE asserts it intended, the costs would be a fraction of those proposed by other offerors.

Accordingly, we find no basis for concluding that the contracting officer had actual or constructive notice of PAE's error before award; PAE's alleged mistake therefore is not correctable.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel